19

Department of

OFFICE

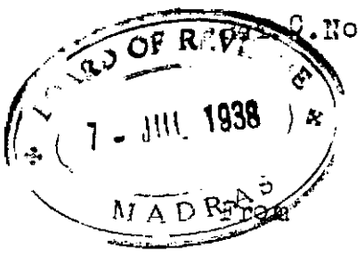
STATION

Mrs No. 2010

Dated

Pages in the file

(SUBJECT.)



C.No. A5-4149-38.

South Kanara Collector's Office,
Mangalore, dated 4th July 1938.

Sri Rao Bahadur M.V.Vellodi, B.A.,
Collector of South Kanara.

To

The Secretary, Board of Revenue,
Land Revenue and Settlement, Madras.

Sir,

REVENUE RECOVERY - Demand notice No. 1 - Fixing of time limit for execution - Distraint after the expiry of the time - Legality - Instructions sought -

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According to clause 1 of Section 8 of the Revenue Recovery Act, the demand notice (No.1) is the authority for the distrainer to make the distress. The Act does not contemplate the prescribing of any time limit for the ---- execution of this process. But, apparently for the sake of administrative convenience and effective despatch of business a limitation of time for the execution of the demand notice has been fixed in B.P.O. 41 (22). It is consequently the practice in Taluk Offices to note a date in the last column of the demand notice and such a date may either indicate the date by which the distraint should be effected or the date by which the warrant should be returned to the Taluk Office.

2. A case has now occurred in which a distraint was effected by the village headman after the date noted in the Distraint warrant and the Magistrate before whom the case went up in connection with the removal of the attached property has taken exception to the validity of the distraint. A question has, therefore, arisen as to whether a distraint effected after the date mentioned in the Distraint warrant is an illegality that will vitiate the distraint proceedings. It may be argued on the one hand that the fixing of the date

for execution of the demand notice has no force of law as it is not prescribed under the Act, but is only an executive order of the Board for securing promptness in the execution of the Distraint Warrant and the authority issuing the warrant has no authority to fix a time limit under the law. On the other hand, it may be argued, perhaps with greater force, that the time limit fixed in the demand notice or even under a separate order ---- accompanying it restricts the power of the distrainer. I request that the Board may be pleased to give a ruling on the point. The Government Pleader, Mangalore, whom I consulted gives his opinion on the point as follows:-

"The warrant is the authority for the person who distrains and the time limit fixed in the warrant or even under a separate order restricts the power under the warrant. Unless the time is extended or a separate warrant is issued the warrant is absolutely valueless after the expiry of the time fixed. The execution after the said date is not a mere irregularity but is illegal"

For Collector.

5.7.58.

Revenue Recovery (S. Kannan) - Distress warrant - Execution - Time limit of 20 days - ~~Improper~~ - Collector informed

A 4122/38 ... Q

(Collrs Letter Rg A 5-41 49-38/41-38

Res(A) Nil 2010 of 21.7

On attention of the Collr of S. Kannan is drawn to BP no 247 d 26.1892 and he is informed that period of 20 days prescribed u/s BBO 41(22), which has been in force for a very long time, is the time allowed for the execution and return of distraint warrant to the proper Office and that the Local Govt opinion that ~~for~~ the warrant becomes inoperative ~~and another distress is ordered and~~ ~~has been issued~~ unless executed within that period, viz 20 days, is correct.

Sir

Mr Jh

Revenue Recovery (Distress) - Demand notice No 1 - Distraint warrant - Fixing upa time limit for execution under BSO 41(22) - Effect

Sec 4

HH 247

A 4122/38

To Secy

Please see the Collr's letter at pp4-5. The Local Govt Dept's opinion is that distraint warrant executed after the limit of time prescribed therein under BSO 41(22) is illegal is correct, having been based on BR No 247 dated 3.6.1892 limit prescribed of 20 days prescribed therein is sufficiently long for the return of distraint warrants duly executed and if for any special reason they could not be executed within the time allowed the proper course would be to renew the warrant. The rule in the BSO has been in force for well nigh half a century and there is no reason to delete or revise the provision in the absence of any strong reasons: the time limit prescribed in distraint warrants with reference to the BSO is the time allowed for execution & return of the warrant & the originating Dept and this no doubt imposes a restriction

on the power of the branch. Let the
the position may be explained. Put the letter
13.7.38 and his attention drawn also
to the correspondence in B.P. 247 at (R) in Vol Colour
dt 3-6-92 (on wh B.S.O. 41(22) Remarks
16.7.38 is based) dt 381 BSO Vol II

Secy

Draft submitted

Secy

1A

CIRCULATION CHECK SLIP.

B.P. No. 2010 Mn

Dated 21 7 38

Single Member

Two Members

Full Board.

1.A.	A.D.S- & L.R.,	A.S. L.R.,	A.S. Sett.	A.S. Sep. Rev.,	J.S.	Secy.	M.3.	M.2.	M.1

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(1) Open file seen by

(2) Final draft seen by

(3) Now circulated to

(4) Initials.

Passed for record.

**Secretary
Joint Secretary

A.S. (L.R.,)

A.S. (Sett.,)

A.S. (Sep. Rev.,)

A.D.S & L.R.,

I.A.

** Note - Entries not required to be scored out.

MSR/NA